

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2054 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

R.C. SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR JF SHAH for Petitioner

MR LR PUJARI for Respondents No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/04/98

C.A.V. JUDGEMENT

1. The petitioner, an Ex-Superior Field Worker of the Health and Family Welfare Department of the Government of Gujarat, filed this special civil application and prayer has been made for direction to the respondent No.2 to consider the case of the petitioner for fixation of notional date of promotion to the post of Malaria Surveillance Inspector and then to give him promotion from deemed date and ancillary benefits

including the grant of selection grade and other monetary benefits. The petitioner also prayed for quashing and setting aside of the judgment of the Gujarat Civil Services Tribunal at Ahmedabad, dated 2-1-1986 given in the Appeal No.338/84.

2. The facts of the case, in brief, are that the petitioner entered in the services of the respondent as Superior Field Worker on 14th June, 1956 in the National Malaria Eradication Programme. Another person, namely, Shri Bhesania was appointed as Insect Collector in the department with effect from 10-4-1961. The pay scales of the post of Insect Collector and Superior Field Worker were the same and the channel of promotion from these two posts has been provided to the post of Malaria Surveillance Inspector. Shri Bhesania was promoted to the post of Malaria Surveillance Inspector in the year 1971. However, the person junior to Mr. Bhesania was given promotion to the post of Malaria Surveillance Inspector with effect from 27th December, 1967, and as such, Shri Bhesania approached to the Gujarat Civil Services Tribunal at Gandhinagar by filing an appeal No.113/81, which came to be decided on 18-5-1983 and he made a claim for giving him the deemed date of promotion to the post of Malaria Surveillance Inspector w.e.f. 27th December, 1967. In pursuance of the decision given by the Tribunal in his case, under the order dated 19th November, 1983, Shri Bhesania was given the deemed date of promotion from 27th December, 1967 and some other consequential benefits. The petitioner filed an appeal before the Tribunal and claimed the promotion on the post of Malaria Surveillance Inspector from 27th December, 1967 with consequential benefits, which appeal came to be dismissed by the Tribunal under the order dated 2-1-1986. Hence, this special civil application before this Court.

3. The learned counsel for the petitioner contended that the petitioner was senior to both Shri Bhesania as well as Smt. T.N. Shah, and when Mr. Bhesania was given the deemed date of promotion from 27th December, 1967, he should have been given the promotion from the said date. It has next been contended that the Tribunal has given contrary decision. While deciding the appeal of Shri Bhesania, the Tribunal has taken the view that the recruitment rules have been framed in the year 1975 and earlier to that all the persons whether they are S.S.C. passed or having the certificate of Sanitary Inspector Examination were eligible for promotion but while dealing with the appeal of the petitioner it has taken a somersault and the claim has not been accepted. Carrying this contention further, the learned counsel for

the petitioner contended that the petitioner cited the case of one Shri K.H. Khan, who was Insect Collector, and who had not passed either S.S.C. or Sanitary Inspector Examination but he was promoted as Malaria Surveillance Inspector from 28th July, 1960.

4. On the other hand, the learned counsel for the respondents submitted that the petitioner cannot be given the benefit of the order dated 19th November, 1983 as that order has been passed by the respondent in compliance of the decision given by the Tribunal in the case of Shri Bhesania. The decision of the Tribunal in the case of Shri Bhesania was not challenged and as such that order has to be complied with. Otherwise that decision was not a correct decision. The Tribunal earlier in appeal No.385/82 held that it is not true that both the Malaria Surveillance Inspector and Insect Collectors, who were S.S.C. fail or who had not passed the Sanitary Inspector Examination were eligible for promotion. It has next been contended that Shri Bhesania was promoted in the year 1971. Shri Bhesania obtained the qualification of Sanitary Inspector Certificate prior to 1971 and further in the year 1971 he passed the S.S.C. examination also. Smt. T.N. Shah has passed the S.S.C. examination in the year 1961. The petitioner has not challenged the promotion of Shri Bhesania made in the year 1971, that of Smt. Shah made in the year 1967 as well as the promotion of Shri K.H. Khan made in the year 1960. The petitioner after so many years of promotion of his juniors cannot claim promotion from the deemed date and in the facts of this case the Tribunal has rightly reached to the conclusion that the petitioner has no case whatsoever.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. There is no dispute that as per Rules of 1975, the petitioner was not eligible for promotion. In the year 1971, when Shri Bhesania was promoted, the petitioner was not possessing the certificate of Sanitary Inspector Examination, on the basis of which qualification, Shri Bhesania was promoted and coupled with the fact that the petitioner has not challenged that promotion, his claim for deemed date of promotion made in the year 1984 cannot be accepted. The petitioner has never raised any voice against the promotions made of Shri Bhesania and Smt. Shah. Leaving apart the fact that both these persons otherwise were having the qualifications of certificate of Sanitary Inspector Examination and S.S.C. for all the years to come and

after more than 12 years of the promotion in the case of Shri Bhesania and of 14 to 16 years of Smt. Shah, he cannot be permitted to raise all these objections. It is true that Shri Bhesania was given deemed date of promotion from 27th December, 1967 but that was given in pursuance of the decision given by the Tribunal and the petitioner cannot raise any cause of action from that order. The Tribunal had put a specific question to the counsel, who was appearing for the petitioner before it to indicate any Insect Collector /Superior Field Officer, junior to the petitioner and who possessed the same qualification as the petitioner i.e. non-S.S.C. and non-Sanitary Inspector Certificate, and who was promoted to the post of Malaria Surveillance Inspector till the notified service rules came into force. The learned counsel for the petitioner before the Tribunal could not indicate any case of the junior to him with the qualification of non-S.S.C. and non-Sanitary Inspector Certificate, who has been given the promotion to the post of Malaria Surveillance Inspector. He cited the example of one Shri K.H. Khan, who was Insect Collector and who had not passed either S.S.C. or Sanitary Inspector Certificate examination but was promoted to the post of Malaria Surveillance Inspector from 28th July, 1960. But there is no dispute that Shri Khan was senior to the petitioner. So the Tribunal has taken into consideration the fact that none of the juniors to the petitioner with the qualification of non-S.S.C. or non-Sanitary Inspector Certificate examination and who worked in the category of Insect Collector or Superior Field Officer has been given promotion to the post of Malaria Surveillance Inspector has taken the view that it cannot be said to be a case where any injustice has been caused to the petitioner. No exception can be taken to the decision given by the Tribunal in the present case. In case where any junior would have been promoted with the qualification of non-S.S.C. or non-Sanitary Inspector Certificate then it is understandable that there would have been some semblance of justification in the claim of the petitioner though subject to limitation. But Shri Bhesania and Smt. Shah were given promotion only after they acquired the qualification of Sanitary Inspector Certificate Examination or S.S.C.. The petitioner's claim for deemed date of promotion does not stand to any merits. The Tribunal has not committed any error whatsoever in not giving the relief to the petitioner in the present case. The claim of the petitioner for deemed date of promotion deserves to be rejected both on the ground of delay and laches as well as on the ground that no injustice has been caused to the petitioner as none of the junior to him with similar qualifications which he

possessed has been given the promotion.

7. In the result, this special civil application fails and the same is dismissed. Rule discharged.

zgs/-